

## STATE OF MAINE

KENNEBEC, SS.

Before the Grievance Commission  
File No. 91-K-244

BOARD OF OVERSEERS OF THE BAR,

Petitioner

V.

RICHARD H. THOMPSON,  
Naples, Maine

Respondent

## FINDINGS AND CONCLUSIONS OF PANEL D OF THE GRIEVANCE COMMISSION

On May 26, 1992, pursuant to due notice, Panel D<sup>1</sup> of the Grievance Commission conducted a disciplinary hearing open to the public according to Maine Bar Rule 7(e)(2), to determine whether grounds existed for the issuance of a reprimand, or whether probable cause existed for the filing of an information with respect to the alleged professional misconduct of Respondent, Richard H. Thompson, of Naples, Cumberland County, Maine, as described in the Petition dated March 13, 1992, filed by Bar Counsel of the Board of Overseers of the Bar.

The Board of Overseers of the Bar was represented by Karen G. Kingsley, Assistant Bar Counsel, and Respondent acted pro se. An Answer had been filed on behalf of Respondent dated April 16, 1992.

Prior to the commencement of the hearing, Assistant Bar Counsel and Respondent agreed without objection to the admission

<sup>1</sup> Mark V. Schnur substituted for Craig A. McEwen at the hearing.

of Exhibits 1 through 11, as attached to the Petition. Respondent's Exhibits 1 and 2 constituting files of copies of various documents in the proceeding representing complainant in the divorce matter were also admitted. Witnesses at the hearing were Complainant Randall Malm and Respondent Richard H. Thompson. Mr. Malm was sequestered as a witness during the testimony of Respondent Richard H. Thompson, who was called as a witness by Assistant Bar Counsel for Petitioner.

#### FINDINGS OF FACT

Respondent was at all times relevant hereto an attorney duly admitted and engaging in the practice of law with an office in Naples, Cumberland County, State of Maine, and subject to the Maine Bar Rules.

1. Respondent had represented Complainant Randall Malm in a divorce proceeding in the District Court of Maine, Division of Southern Oxford, Docket No. SOP-90-DV-146.

2. Complainant Randall Malm had filed a complaint with the Fee Arbitration Commission Panel of the Board of Overseers of the Bar, Dispute #91-81, and as a result of that proceeding against Respondent, the Fee Arbitration Commission Panel ordered a return of a substantial portion of the fees to Complainant Randall Malm, and noted that Respondent had not kept contemporaneous time records in the matter on which he was billing on an hourly basis. The Fee Arbitration Panel determination was admitted as Board Exhibit 5 at the hearing.

3. Respondent answered inquiries from Bar Counsel, with regard to the complaint of Randall Malm, only after receiving a follow up letter by certified mail indicating that failure to respond to Bar Counsel's inquiries constituted non-compliance with Maine Bar Rule 2(c). At the end of the hearing May 26, 1992, Respondent was directed to provide the Panel with additional trust account or office account records of the payments of fees from Complainant's family counsel in Massachusetts by June 10, 1992. Such information was not sent by Respondent until letter dated July 2, 1992, received by Bar Counsel July 7, 1992, further constituting a disregard for timely responses required by Rule 2(c).

4. It was apparent throughout the testimony of Respondent, that Respondent failed to keep contemporaneous time records on matters on which he billed on an hourly basis. Further the lack of information regarding trust account records and office account records, apparent from testimony at the hearing and based on documents submitted by Respondent after the hearing to the Panel, reflected a clear violation of Rule 3.6(f)(2)(iii), whereby Respondent failed to maintain complete records of all funds of a client coming into possession of the lawyer and failed to provide a prompt, appropriate and complete account to the client or the Panel regarding those funds. No client record of trust funds was produced, and no canceled checks were produced by Respondent to document his position.

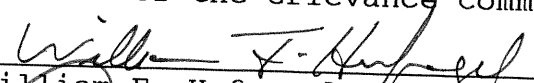
### CONCLUSION

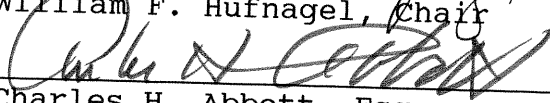
This Panel concludes that mindful of all of facts and circumstances of this case and the Award and Determination of the Fee Arbitration Panel, Respondent violated Rule 3.3(a). Further the Panel finds that Respondent violated Rule 2(c) for not timely responding to inquiries of Bar Counsel or response time set by the Panel. The Panel further finds that Respondent has failed to maintain adequate and complete records of all funds of a client coming into possession of Respondent or rendering prompt and appropriate accountings to the client regarding them in violation of Rule 3.6(f)(2)(iii). Failure to maintain adequate records of clients' funds is of serious concern to the Panel, and could result in more serious discipline in other circumstances. However, the fee issues were resolved by the Fee Arbitration Panel in this matter without particular detriment to the client as to lack of trust account records.

The Panel concludes that the appropriate disposition of this complaint is that Respondent be, and he hereby is, reprimanded for violation of the above Maine Bar Rules as established in the findings of facts discussed in this report.

Dated this 23rd day of September, 1992.

Panel D of the Grievance Commission

  
William F. Hufnagel, Chair

  
Charles H. Abbott, Esq.

  
Mark V. Schnur, Esq.

BOARD OF OVERSEERS OF THE BAR

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